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(18,826.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 211.

NORTHERN PACIFIC RAILWAY COMPANY

vs.

ALLINE A. DIXON, ADMINISTRATRIX OF THE ESTATE OF CHAUNCEY A. DIXON, DECEASED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Certificate of the United States circuit court of appeals for the eighth circuit	1	1
Statement	1	1
Questions certified	4	3
Judge's certificate	5	3
Clerk's certificate	6	4

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 10, 1903.

1 United States Circuit Court of Appeals, Eighth Circuit.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff in Error, *vs.* ALLINE A. DIXON, Administratrix of the Estate of Chauncey A. Dixon, Deceased, Defendant in Error.	In Error to the Circuit Court of the United States for the District of Minnesota.

The United States circuit court of appeals for the eighth circuit sitting at the city of St. Louis, Missouri, on the 22nd day of January, A. D. 1903, certifies that the record on file in the action above entitled, which is pending in this court upon a writ of error duly issued to review a judgment rendered in said action in favor of the defendant in error in the United States circuit court for the district of Minnesota discloses the following facts:

The defendant in error as administratrix of the estate of Chauncey A. Dixon brought this action in the court below, as she was authorized to do by the statutes of the State of Montana, to recover damages for the death of her son, Chauncey A. Dixon. She alleged in her complaint the necessary facts to give the court jurisdiction, that her son Chauncey was killed in the State of Montana on December 25, 1899, while he was employed by the plaintiff in error, and was engaged, as a fireman in operating extra freight train No. 162, by means of a head-end collision of that train with extra freight train No. 159, which was brought about by the negligence of the plaintiff in error. The railway company in its answer admitted the jurisdictional facts, the employment, the collision and the death, but denied that it was guilty of negligence and alleged that the death was caused by the negligence of a local telegraph operator and station agent who was the fellow servant of the deceased fireman. The parties to the action waived a jury, made an agreed statement of facts and sub-
2 mitted the case to the court for decision. These were the facts: The railway company was operating its railroad in Montana. It had made and promulgated time tables for its regular trains and had adopted reasonable rules for the operation of all its trains. The time tables did not, and could not provide for the running of extra trains. The railway company had in its employment a train dispatcher at Missoula, in the State of Montana, who had general power and sole authority to make and promulgate orders for the running of those trains on the division of its railroad on which this collision occurred which were not governed by the time tables. A large proportion of its freight trains on this division were run as extra trains and the times of their arrivals and departures were not shown on the regular time tables, but their movements were made upon telegraphic orders issued by the train dispatcher upon information furnished by telegraph to the train dispatcher by its station agents and operators along the line of the railroad. All these facts were well known to the plaintiff's intestate, Chauncey A. Dixon.

One of the rules of the company was: "Operators will promptly record in a book to be kept for the purpose and report to the superintendent, the time of arrival and departure of all trains and the direction in which extra trains are moving." The reports mentioned in this rule were made to the train dispatcher and he was vested with the authority of the superintendent to issue orders for the movement of trains.

On the evening of December 24, 1899, extra freight train No. 162 on which Dixon was fireman was running east and extra freight train No. 159 was running west on the railroad of plaintiff in error. They were running on special schedules not included in the time tables and under the telegraphic orders of the train dispatcher at Missoula in accordance with the rules of the company. No. 162 left Missoula going east at 10.20 p. m. on December 24, 1899. Its destination was Helena, Montana. Bonita is a station 26 miles east of Missoula, Carlan a station 33 miles east of Missoula, Drummond a station 53 miles east of Missoula and Garrison is a station 74 miles east of Missoula. No. 159 was east of Garrison under orders
3 to run west to Garrison. The only telegraph offices open during the night between Missoula and Garrison were those at Bonita and Drummond. It was the duty of the telegraph operator and station agent at Bonita to observe the movement of trains passing his station during the night and to advise the train dispatcher at Missoula of their movements. Extra freight train No. 162 arrived at Bonita at 12.35 a. m. on December 25, 1899, and left there at 12.50 a. m. on that day, but the local operator and station agent was asleep and did not know of, or report its passage and none of the crew on that train were aware of the fact that extra No. 159 was coming west. The railroad had but one track. At 1.05 a. m. No. 159 reached Garrison and that fact was reported to the train dispatcher. Thereupon he asked the telegraph operator and station agent at Bonita by telegraph whether or not extra freight No. 162 had arrived there and he promptly answered that it had not. The train dispatcher then ordered the train crew of No. 159 to run extra from Garrison to Missoula and to meet No. 162 at Carlan, and this order was duly received by that crew at Garrison. At the same time he ordered the crew of No. 162 to meet No. 159 at Carlan and sent this order to the operator and station agent at Bonita to deliver to them. At the same time he ordered a red signal displayed at Drummond to stop No. 159 there so that the meeting point could be changed on its arrival there if necessary. These orders were complete at 1.18 a. m. At 1.20 a. m. No. 159 left Garrison and it arrived at Drummond at 1.57 a. m. and the train dispatcher was immediately informed of this fact. He then inquired of the operator and station agent at Bonita whether or not extra freight No. 162 had arrived at Bonita yet and the latter promptly replied "No sign of them yet." He then asked him if he was sure No. 162 had not passed and he replied yes. The train dispatcher then repeated his inquiry and the operater and station agent at Bonita answered "Yes, I am sure extra 162 has not passed." Thereupon the train dispatcher issued an

order to the crew of No. 159 to meet No. 162 at Bonita and an order to the crew of No. 162 to meet No. 159 at Bonita and sent the former order to Drummond and the latter to Bonita. The crew of No. 159 received their order and proceeded with their train. It col-
4 lided with No. 162 and the intestate Dixon was killed by the collision about four miles west of Drummond at 2.15 a. m. The damages sustained by the defendant in error by his death were $3500. Upon this state of facts the circuit court rendered a judgment for the defendant in error and the plaintiff in error sued out a writ of error to reverse it.

And the said circuit court of appeals for the eighth circuit further certifies that the following questions of law among others are presented by the assignment of errors in this case, that their decision is indispensable to a decision of this case and that to the end that this court may properly decide the issues of law presented it desires the instruction of the Supreme Court of the United States upon the following questions and propositions of law, to wit:

First. When a local telegraph operator is called upon specially by a train dispatcher to give information relative to the arrival of a train at his station, to enable the dispatcher to formulate orders for the movement of other trains, does the local operator in the matter of giving such information act as a fellow servant of train operatives in such sense that the master is not liable to train operatives who are injured by obeying an erroneous order of the dispatcher that was induced by false information given by the local operator?

Second. Is the negligence of a local telegraph operator and station agent of a railway company in observing and reporting by telegraph to the train dispatcher the movement of trains past his station, which causes the injury or death of a fireman of the company without any fault or negligence of the train dispatcher, the negligence of a vice-principal for which the railway company is liable in damages to the fireman or his personal representatives, or is it the negligence of a fellow servant of the fireman the risk of which the latter assumes?

5 In witness whereof, the undersigned judges holding the said United States circuit court of appeals for the eighth circuit, have hereunto set their hands this twenty-second day of January, A. D. 1903, at St. Louis, Missouri, and ordered that the foregoing certificate be filed in said circuit court of appeals and by the clerk of said court duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL,
WALTER H. SANBORN,
AMOS M. THAYER,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

6 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of Northern Pacific Railway Company, plaintiff in error, *vs.* Alline A. Dixon, administratrix of the estate of Chauncey A. Dixon, deceased, defendant in error, No. 1775, December term, A. D. 1902, was duly filed and entered of record in my office by order of said circuit court of appeals and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this 22nd day of January, A. D. 1903.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals
for the Eighth Circuit.

[Endorsed:] U. S. circuit court of appeals, eighth circuit. December term, 1902. No. 1775. Northern Pacific Railway Company, plaintiff in error, *vs.* Alline A. Dixon, adm'x, &c. Certificate of questions to the Supreme Court of the United States. Filed Jan. 22, 1903. John D. Jordan, clerk.

Endorsed on cover: (Certificate.) File No. 18,826. U. S. circuit court of appeals, eighth circuit. Term No. 211. Northern Pacific Railway Company *vs.* Alline A. Dixon, administratrix of the estate of Chauncey A. Dixon, deceased. Filed February 6, 1903.